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diction; and hence a party petitioning for review and correction of an assessment on mineral lands under Code 1904, § 437a, as amended by Acts 1910, c. 39, which provides the exclusive procedure for correction thereof, was entitled to a writ of prohibition against the auditor of public accounts, whose petition to review such assessment instituted under Code 1904, § 573, was without authority.

[Ed. Note.—For other cases, see Prohibition, Cent. Dig. §§ 37-56; Dec. Dig. § 10.* 11 Va.-W. Va. Enc. Dig. 396; 14 Va.-W. Va. Enc. Dig. 848; 15 Va.-W. Va. Enc. Dig. 831.]

Prohibition by Max Grief against Hon. Fulton Kegley, Judge of the Circuit Court of Bland County. Writ awarded.

J. J. A. Powell, of Wytheville, for petitioner.

The Attorney General, for Auditor of Public Accounts.

MUTUAL FIRE INS. CO. *v.* TURNER.

Nov. 20, 1913.

[79 S. E. 1067.]

1. Insurance (§ 195*)—Fire Insurance—Mutual Companies—Notice of Assessment.—Where the charter of a mutual assessment fire company, which was made a part of the contract between the parties, provided that each member of the association should be notified of the assessment, at least 30 days before the last day of payment, by mailing such notice to the post office address given by the member in the application for insurance, and that in case of change of address the member should in writing furnish the secretary with his new address, and the insured, who was not then living at her old address, had not notified the secretary of any change, the fact that the company sent the notice, which it had previously sent on postcards that might be forwarded, in an unsealed letter which could not be forwarded, and for that reason it was not received, will not relieve insured from a forfeiture of her policy because of nonpayment of assessments.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 427-429, 433, 434; Dec. Dig. § 195.* 10 Va.-W. Va. Enc. Dig. 325; 14 Va.-W. Va. Enc. Dig. 758; 15 Va.-W. Va. Enc. Dig. 719.]

2. Insurance (§ 195*)—Fire Insurance—Waiver.—Where the charter of a mutual fire insurance company merely required it to give notice of assessments by mail, the fact that for the past two years it had given notice by postcard is not a waiver of its right to give notice by second-class mail which cannot be forwarded as a postal.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 427-429, 433, 434; Dec. Dig. § 195.* 7 Va.-W. Va. Enc. Dig. 803.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

3. Insurance (§ 669*)—Action—Instructions—Form of Instructions.—In an action against a mutual assessment fire company where it was contended that the method of giving notice of assessment to the insured was not proper, the instructions should submit the issue in that form and not whether the notice should have been given in the manner previously followed.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1556, 1771-1784; Dec. Dig. § 669.* 7 Va.-W. Va. Enc. Dig. 816.]

4. Insurance (§ 669*)—Fire Insurance—Actions—Instructions.—In an action against a mutual assessment fire company, instructions requested by defendant on the necessity for the insurer to give notice of assessments held correct and improperly refused.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1556, 1771-1784; Dec. Dig. § 669.* 7 Va.-W. Va. Enc. Dig. 816.]

5. Insurance (§ 392*)—Fire Insurance—Waiver of Forfeiture.—Where a mutual assessment fire company reinstated insured's policy after default in payment of assessments, the reinstatement which came after the insured had discharged a lien on the premises is a waiver of the original ground of forfeiture on account of the lien.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 1041-1056, 1058-1070; Dec. Dig. § 392.* 6 Va.-W. Va. Enc. Dig. 87; 14 Va.-W. Va. Enc. Dig. 448.]

6. Evidence (§ 441*)—Parol Evidence to Vary Written Instruments—Admissibility.—In an action on a fire policy, parol evidence that the written application did not contain some of the terms found therein at the time the insured's agent signed it is inadmissible, being an attempt to vary a written instrument by parol evidence.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1719, 1723-1763, 1765-1845, 2030-2047; Dec. Dig. § 441.* 10 Va.-W. Va. Enc. Dig. 659; 14 Va.-W. Va. Enc. Dig. 803; 15 Va.-W. Va. Enc. Dig. 764.]

Error to Circuit Court, Clarke County.

Action by Harriot S. Turner against the Mutual Fire Insurance Company. There was a judgment for plaintiff, and defendant brings error. Reversed and remanded.

A. Moore, Jr., of Berryville, *Edward Nichols*, of Leesburg, and *Moore, Barbour, Keith & McCandlish*, of Fairfax, for plaintiff in error.

Ward & Larrick, of Winchester, and *F. B. Whiting*, of Berryville, for defendant in error.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.